

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4794 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMESH S PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR SV PARMAR for Petitioner

Ms Manisha Lavkumar, AGP, for Respondent No. 1

MR BP TANNA for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, Ramesh S Parmar, President of "Mass Movement", an association of citizens belonging to Scheduled Castes has challenged the settlement arrived at between the representatives of the striking employees in the State of Gujarat on 18.8.1985. By the said

settlement the Government accepted all the 11 recommendations contained in the report of the Chairman of the Sadhwani Committee with certain clarifications. The gist of this report is at Annexure-A to the petition and the terms of the settlement are at Annexure-B to the petition.

2 Mr S.V.Parmar, learned counsel for the petitioner, has contended that the Government could not enter into such a settlement which is violative of Article 15(4), 16(4) read with Article 21 of the Constitution of India. Reliance is placed on the decision of the Apex Court in STATE OF KERALA V. N.M.THOMAS (1976) 2 SCC 310, AKHIL BHARATIYA SOSHIT KARMACHARI SANGH (RLY) v. UNION OF INDIA in (1981) SCC 246, and SUPERINTENDING ENGINEER PUBLIC HEALTH V. KULDEEP SINGH (1997) 1 SCC 199. It is submitted that the rights conferred by provisions of Article 15(4) and 16(4) of the Constitution are substantive rights in themselves.

It is further submitted that recommendation no.2 of the Chairman of the Committee was subsequently incorporated into Government Resolution dated 12.2.1986 but the Resolution was given only prospective effect and therefore the resolution was unconstitutional insofar as it was not retrospective effect. The recommendation no.3 of the Chairman of the Committee was also unconstitutional insofar as it prescribed stipulated length of service for being eligible for promotion to higher cadre.

It is further submitted that the settlement was also illegal and against the public policy since it was arrived at under coercion resulting from the striking government employees and, therefore, was violative of provisions of Section 14(1) of the Contract Act. Reliance is placed on the decisions in S.M.D.KIRAN PASHA V. GOVT. OF ANDHRA PRADESH & ORS. (1990) 1 SCC 328 and STATE OF M.P. V/S RAM KISHAN BALOTH (1995) 3 SCC 225. Reference is also made to the object and reasons for enactment of Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3 On the other hand, Ms Manisha Lavkumar, learned AGP, has submitted that the petition deserves to be dismissed as the settlement was arrived at in exercise of the powers conferred by Article 162 of the Constitution upon the State Government to run the administration and as per the settled legal position the provisions of Articles 15(4) and 16(4) are merely enabling provisions. It is further submitted that in any view of the matter,

the settlement was arrived at in the year 1985 and has been acted upon for the last 14 years. Apart from the fact that the terms of the Settlement such as minimum length of service for acquiring eligibility for promotion have been incorporated into Statutory Rules which have not have been challenged, a number of promotions have been given on the basis of the terms of the settlement which were also subsequently revised in certain respects. Interfering with the settlement at this stage in the year 1999 would, therefore, have an effect of unsettling thousands of promotions given in the past. Therefore, also the petition deserves to be dismissed.

4 Having heard the learned counsel for the parties, it appears to the Court that without expressing any opinion on the merits of the controversy raised by the petitioner in this petition, this petition is required to be dismissed only on the ground that with passage of 14 years the terms of the Settlement with subsequent revisions thereto have already been acted upon for the last 14 years. Recommendation no.3 regarding the minimum length of service for getting eligibility for promotion to the higher post has also been incorporated in the Gujarat Civil Services (Classification & Recruitment) Rules 1967 which have not been challenged. Promotions have also been given to various cadres all over the State and therefore thousands and thousands of employees have been promoted on the basis of the aforesaid settlement.

5 In view of the aforesaid discussion, the petition is dismissed. Rule is discharged with no order as to costs.

(mohd)